

STATE OF MINNESOTA  
OFFICE OF ADMINISTRATIVE HEARINGS

Jeff Czeczok,

Complainant,

vs.

Gary Scheeler,

Respondent.

**NOTICE OF DETERMINATION OF  
PRIMA FACIE VIOLATION  
AND  
NOTICE OF AND ORDER FOR  
EVIDENTIARY HEARING**

On October 28, 2013, Jeff Czeczok filed a Campaign Complaint with the Office of Administrative Hearings alleging that Gary Scheeler violated Minnesota Statutes Section 211B.13 (bribery/treating) in connection with his campaign for Brainerd City Council in the November 2012 election. After reviewing the Complaint and attached exhibits, the undersigned Administrative Law Judge has determined that the Complaint sets forth *prima facie* violations of Minn. Stat. § 211B.13 on the part of Mr. Scheeler. This determination is detailed in the attached Memorandum.

**THEREFORE, IT IS HEREBY ORDERED AND NOTICE IS HEREBY GIVEN** that this matter will be scheduled for a telephone prehearing conference and an evidentiary hearing to be held at the Office of Administrative Hearings, 600 North Robert Street, St. Paul, Minnesota 55101.

Pursuant to Minn. Stat. § 211B.35, the evidentiary hearing must be held within 90 days of the date the complaint was filed.

You will be notified of the dates of and times of both the telephone prehearing conference and evidentiary hearing, and the three judges assigned to hear this matter within approximately two weeks of the date of this Order. The evidentiary hearing will be conducted pursuant to Minn. Stat. § 211B.35. Information about the evidentiary hearing procedures and copies of state statutes may be obtained online at [www.oah.state.mn.us](http://www.oah.state.mn.us) and [www.revisor.leg.state.mn.us](http://www.revisor.leg.state.mn.us).

At the evidentiary hearing, all parties have the right to be represented by legal counsel, by themselves, or by a person of their choice if not otherwise prohibited as the unauthorized practice of law. In addition, the parties have the right to submit evidence, affidavits, documentation and argument for consideration by the Administrative Law Judge. Parties should bring with them all evidence bearing on the case with copies for the three Administrative Law Judges.

After the evidentiary hearing, the Administrative Law Judges may dismiss the complaint, issue a reprimand, or impose a civil penalty of up to \$5,000. The panel may

also refer the complaint to the appropriate county attorney for criminal prosecution. A party aggrieved by the decision of the panel is entitled to judicial review of the decision as provided in Minn. Stat. §§ 14.63 to 14.69.

Any party who needs an accommodation for a disability in order to participate in this hearing process may request one. Examples of reasonable accommodations include wheelchair accessibility, an interpreter, or Braille or large-print materials. If any party requires an interpreter, the Administrative Law Judge must be promptly notified. To arrange an accommodation, contact the Office of Administrative Hearings at P.O. Box 64620, St. Paul, MN 55164-0620, or call 651-361-7900 (voice) or 651-361-7878 (TTY).

Dated: October 31, 2013

s/LauraSue Schlatter  
LAURASUE SCHLATTER  
Administrative Law Judge

## MEMORANDUM

The Respondent, Gary Scheeler, ran successfully for Brainerd City Council Ward 3 in the November 2012 election. The Complaint alleges that sometime during the 2012 campaign season, Mr. Scheeler engaged in activities that violated the Fair Campaign Practices Act.<sup>1</sup> Specifically, the Complaint alleges that Mr. Scheeler violated Minn. Stat. § 211B.13 by providing money to a woman to purchase a meal for herself and her two children, and by encouraging a homeless man to apply for a job at the company he owns (Brainerd Country Power Equipment).

According to the Complaint, Mr. Scheeler described these two encounters and made a general statement about donating more in the 2012 campaign “than to all the churches” during a closed session of the Brainerd City Council on January 7, 2013. Those attending the closed session included the other members of the Brainerd City Council, the Brainerd City Attorney, City Administrator, and Human Resources Coordinator. The Complaint alleges that Mr. Scheeler commented further that his wife told him that he would “go broke if he continued campaigning in the manner he was describing.”<sup>2</sup>

---

<sup>1</sup> Minn. Stat. Ch. 211B.

<sup>2</sup> Complaint at 2.

The Complainant states that he first became aware of Mr. Scheeler's actions on June 20, 2013, when he listened to the audio recording of the January 7, 2013, closed session meeting of the City Council.

### **Standard of Review**

In order to set forth a *prima facie* case of violations of Minnesota Statutes Chapters 211A and 211B, a complainant must either submit evidence or allege facts that, if unchallenged or accepted as true, would be sufficient to prove a violation of either or both of those two chapters.<sup>3</sup> For purposes of a *prima facie* determination, the tribunal must accept the facts alleged as true. The allegations do not need independent substantiation.<sup>4</sup> A complaint must be dismissed if it does not include evidence or allege facts that, if accepted as true, would be sufficient to prove violations of chapter 211A or 211B occurred.<sup>5</sup>

### **Minnesota Statute Section 211B.13**

Minnesota Statutes section 211B.13 provides as follows:

A person who willfully, directly or indirectly, advances, pays, gives, promises, or lends any money, food, liquor, clothing, entertainment, or other thing of monetary value, or who offers, promises, or endeavors to obtain any money, position, appointment, employment, or other valuable consideration, to or for a person, in order to induce a voter to refrain from voting, or to vote in a particular way, at an election, is guilty of a felony. . .

Minnesota Statutes section 211B.13 is an anti-bribery statute. It prohibits giving something of monetary value in order to induce a voter to vote in a particular way at an election.

### **Analysis**

The Complaint alleges that, while campaigning for Brainerd City Council, the Respondent gave a woman cash to pay for a meal for herself and her two children, and implicitly offered a man a job at his company. As alleged, the nexus between the Respondent's provision of something of monetary value and his electioneering efforts are sufficient to state a claim that the Respondent was illegally inducing voters to vote for him in violation of the Fair Campaign Practices Act.<sup>6</sup> The Administrative Law Judge concludes that the Complainant has alleged sufficient facts to support finding *prima facie* violations of Minn. Stat. § 211B.13.

---

<sup>3</sup> *Barry, et al., v. St. Anthony-New Brighton Independent School District, et al.*, 781 N.W.2d 898, 902 (Minn. App. 2010).

<sup>4</sup> *Id.*

<sup>5</sup> *Id.*

<sup>6</sup> See *Wyckoff v. Peterson*, OAH Docket No. 7-6301-16405-CV (2005) (the provision of 20 chicken dinners on the evening following a "meet the candidates" forum, and three days before the election, violated section 211B.13).

The Administrative Law Judge notes, however, that pursuant to Minn. Stat. § 211B.32, subd. 2, campaign complaints must be filed within one year after the occurrence of the act or failure to act that is the subject of the complaint. The statute includes an exception for acts involving fraud, concealment, or misrepresentation where the conduct could not be discovered during that one-year period. In those cases, the complaint may be filed with the OAH within one year after the fraud, concealment, or misrepresentation was discovered.

The Complaint in this matter was filed with the Office on October 28, 2013. The Complaint states generally that Respondent gave money to a woman and encouraged a homeless man to apply for a job at his company sometime “during the 2012 campaign season.” In order to be timely, the Complainant must show that the alleged acts of bribery occurred on or after October 28, 2012, or that he could not have discovered the acts within one year of their occurrence due to the Respondent’s fraud, concealment or misrepresentation.

The Administrative Law Judge concludes that the claims, if timely, could constitute violations of Minn. Stat. § 211B.13. Therefore, this matter will proceed to a telephone prehearing conference and evidentiary hearing. An order scheduling the prehearing conference will issue shortly.

**L.S.**